



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

January 6, 1998

Ms. Jennifer D. Soldano  
Associate General Counsel  
Texas Department of Transportation  
125 E. 11th Street  
Austin, Texas 78701-2483

OR98-0031

Dear Ms. Soldano:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID#111821.

The Texas Department of Transportation (the "department") received a request for information relating to an electrocution accident on September 19, 1996. You claim that the requested information is excepted from disclosure under section 552.103 of the Government Code. You have submitted a representative sample of the information at issue to this office for review.<sup>1</sup>

Section 552.103(a) of the Government Code excepts from disclosure information:

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

To secure the protection of section 552.103(a), a governmental body must demonstrate that requested

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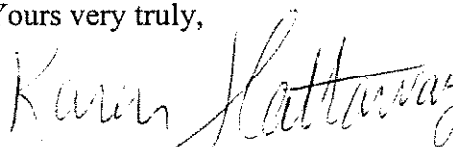
<sup>1</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 551 (1990).

In Open Records Decision No. 638 (1996), this office stated that a governmental body may demonstrate that it reasonably anticipates litigation if it receives a notice of claim letter and represents to this office that the letter is in compliance with the requirements of the Texas Tort Claims Act, Civ. Prac. & Rem. Code, ch. 101, or an applicable municipal ordinance or statute. You state that department received a "notice of claim that meets the requirements of the Tort Claims Act." The notice of claim alleges that the department is responsible for damages arising from the electrocution accident. We conclude, therefore, that the department reasonably anticipates litigation relating to the electrocution accident. Our review of the submitted information indicates that the information is related to the reasonably anticipated litigation. Thus, the department may withhold the information from disclosure pursuant to section 552.103(a) of the Government Code.<sup>2</sup>

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have any questions about this ruling, please contact our office.

Yours very truly,



Karen E. Hattaway  
Assistant Attorney General  
Open Records Division

KEH/ch

Ref: ID# 111821

Enclosures: Submitted documents

cc: Mr. Stephen R. Pilcher  
Chunn & Pilcher, P.L.L.C.  
613 N.W. Loop 410, Suite 550  
San Antonio, Texas 78216-5584  
(w/o enclosures)

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<sup>2</sup>We note that if the opposing party in the anticipated litigation has seen or had access to the requested information, there would be no justification for withholding that information from disclosure pursuant to section 552.103(a). Open Records Decision Nos. 349 (1982), 320 (1982). In addition, the applicability of section 552.103(a) ends once the litigation has concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).